

1 hearings, determinations and -- occasionally -- penalties. If an
2 incumbent LEC were found not to have met its engineering objectives or
3 consumer satisfaction goals, it might be given a fine. The fines,
4 however, were trivial in comparison to the savings realized by the
5 ILEC by not installing the equipment necessary to meet the regulators'
6 standard, or by not dedicating the personnel necessary to achieve the
7 standard.^{11/} In the new environment envisioned by the Act, commercial
8 arrangements should replace regulatory oversight. The telephone in-
9 dustry should police itself to the benefit of all participants in the
10 industry, and ultimately, to the benefit of all consumers. Specific,
11 detailed performance standards and penalties for failure to meet them
12 should be included in all interconnection agreements between TCG and U
13 S West. This approach will ensure that a new sphere of regulatory
14 oversight will not be necessary, thus furthering the deregulation ob-
15 jectives of the Act.
16
17
18

19 8. CONCLUSION

20 Q. Can you summarize the evidence that you have presented to
21 the arbitrator?
22

23 A. Yes. For the reasons I have discussed above, TCG's offers to
24 U S West in its application regarding compensation for local call
25

26 ^{11/} US West has faced penalties for substandard service in Colorado;
for example: \$308,000 for third quarter 1995, \$424,000 for second
quarter 1995, and \$288,000 for first quarter 1995.

Item 7	TCG's final offer on Performance as submitted to Arizona arbitrator
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ATTACHMENT B

**PROPOSED PERFORMANCE STANDARDS
AND REMEDIES**

Performance Reports

The Parties agree to provide each other with performance reports on the measures above on a monthly basis. The Parties shall provide such reports not later than 28 calendar days after the completion of the monthly reporting period.

Analysis of persistent failure to meet the above objectives will be jointly reviewed on a monthly basis between the Parties' management representatives until performance improves to the Objective level.

Penalties

The following penalties shall apply when default has occurred as defined. Payment of penalties shall be in the nature of liquidated damages to the non-defaulting Party. Where more than one performance category is subject to the penalty, a penalty payment for each category will be made by the defaulting Party to the non-defaulting Party.

Penalty 1:

\$5,000.00 per measurement category based on a full month's reporting.

Penalty 2:

\$10,000.00 per measurement category based on a full month's reporting.

Penalty 3:

\$25,000.00 per occurrence. For interconnection trunks, this Penalty shall only apply when either Party can demonstrate that the failure to meet the Objective resulted in the unplanned blocking of traffic on one or more final trunk routes for which the trunk order(s) were not completed by the confirmed due date.

Dedicated Access

The Parties agree to the Dedicated Access standards and penalties below:

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Orders are confirmed.	98% of orders confirmed by the end of the business day following receipt of the order.	Less than 98% of the average of the 10 largest Dedicated Access purchasers for all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the intervals defined in Section II A. 10 of the Agreement.	Less than 95% of the average of the 10 largest Dedicated Access purchasers for all such intervals.	Penalty number 2 below.
Dedicated Access installations are completed.	98% of Dedicated Access orders are completed on or before the agreed upon due date.	Less than 95% of the average of the 10 largest Dedicated Access purchasers for all such installations.	Penalty number 2 below.
Dedicated Access repairs meet standards	Dedicated Access repairs (where the fault is in USWC's network) will be repaired in two (2) hours or less.	More than 105% of the average Dedicated Access repair interval of the 10 largest purchasers of Dedicated Access.	Penalty number 3 below.

Unbundled Links

Unbundled Links are provided under the terms as described in the Agreement. Additionally, performance standards for coordinated Link provisioning are defined in the Agreement. The Parties agree to the unbundled Link performance standards and penalties below:

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Orders are confirmed.	98% of orders confirmed by the end of the business day following receipt of the order.	Less than 95% of the average of the 10 largest Link purchasers for all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the intervals defined in Section II A. 10 of the Agreement.	Less than 95% of the average of the 10 largest Link purchasers for all such intervals.	Penalty number 2 below.
Link installations are completed.	98% of Link orders are completed on or before the agreed upon due date.	Less than 95% of the average of the 10 largest Link purchasers for all such installations.	Penalty number 2 below.
Link repairs meet standards	Link repairs (where the fault is in USWC's network) are repaired in same average interval as USWC's equivalent exchange service (e.g. IMB, ISDN) in the same Wire Center locations in the same measurement month.	More than 105% or the average Link repair interval of the 10 largest purchasers of Links.	Penalty number 3 below.

Local Interconnection Trunks

Because the Parties have chosen to interconnect their networks via one-way Switched Access trunks for intraLATA toll traffic, two-way local interconnection trunks for local traffic and two-way Meet-Point Switched Access trunk groups, the Parties have mutual and reciprocal interest in maintaining the engineering and operations standards established in the Agreement.

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Order are confirmed.	98% of orders confirmed by the end of the seventh (7th) business day following receipt of the order.	Less than 95% of the average of all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the standard intervals for USWC's switched access services.	Less than 95% of the average of all such intervals.	Penalty number 2 below.
Trunk installations are completed.	95% of trunk orders are completed on or before the agreed upon due date.	Less than 95% of the average of all such installations.	Penalty number 3 below.

PERFORMANCE STANDARDS AND PENALTIES

Notwithstanding the Limitations of Liability provisions set forth in the Agreement, the Parties agree that the following Performance Standards shall apply to the provision of network interconnection and unbundled Network Elements provided to each other this Agreement. The parties further agree that failure to meet such Performance Standards would give rise to damages which would be impractical or extremely difficult to determine. In such an event, the non-defaulting Part shall provide the defaulting Party written notice of the default no later than 30 days following receipt of the measurement report identifying missed objective.

Penalties, if any, shall be applied when performance to the Objective by one of the Parties fails to meet any of the criteria below:

- a) The performance Objective is not met for any three (3) consecutive calendar months;
- b) The performance Objective is not met for five (5) or more calendar months in any calendar year, or
- c) The performance measure falls below the Penalty Limit, if any, established below for any calendar month.

The objectives related to orders and completion of orders established below (other than for Orders placed correctly) are based on receipt of complete and correct orders from the ordering Party by the other Party. The Firm Order Confirmation date ("FOC" date) will establish the due date for any orders in this section. Revisions or supplemental changes to already confirmed orders may generate a new due date, which will then become the date for tracking performance under this category. Link orders failing to meet one or more of the Objectives below, due to the ordering Party (or the ordering Party's customer) not being ready or prepared to meet the confirmed due date or any preceding test or other order interim dates required to establish the interconnection, will result in exclusion of that order from measurement to the Objective or application of penalties, except when new or revised due dates have been requested by the ordering Party and confirmed by the receiving Party. For interconnection trunk orders, the defaulting Party in failing to meet trunk installations may be either the ordering Party or the receiving Party. Determination of default will be made by identification of which Party caused the past due performance on any individual trunk order.

Item 8	Recent New York Public Service Commission Order on Performance Standards for Unbundled Loops
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on June 19, 1996

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Harold A. Jerry, Jr.
William D. Cotter
Thomas J. Dunleavy

CASE 96-C-0036 - Complaint of AT&T Communications of New York, Inc. against New York Telephone Company concerning AT&T's request for four collocated cages to be provided by New York Telephone Company pursuant to its Optical Transport Interconnection Service II ("OTIS-II") Tariff.

ORDER TO RESOLVE COMPLAINT
AND CLARIFY ONA ORDER

(Issued and Effective September 30, 1996)

BY THE COMMISSION:

On January 15, 1996, AT&T Communications of New York, Inc. (AT&T) filed a complaint against New York Telephone Company (NYT) in connection with AT&T's request for four collocated "cages" to be provided by NYT pursuant to its Optical Transport Interconnection Service II tariff, PSC No. 900 -- Telephone, Section 12, Para. I.2, et seq (P.S.C. No. 900).¹ AT&T alleges that NYT willfully failed to comply with the Commission's Order resolving the time established for NYT to complete collocation construction pursuant to an Open Network Architecture Task Force proceeding initiated at the request of ACC Syracuse Telecom Corp.

¹ P.S.C. No. 900 sets forth the terms and conditions under which an applicant may place its equipment and facilities on NYT's central office premises for purpose of interconnecting to NYT's network on an intrastate basis using their own fiber facilities. A collocation multiplexing node or "cage" is established for each interconnector to place certain equipment and facilities. The price to establish a cage is developed on a case-by-case basis, reflecting the actual costs of construction.

(ONA Task Force).¹ AT&T further alleges that NYT refused to continue construction or permit AT&T to inspect the cages unless AT&T signed a Collocation License Agreement (with terms and conditions in addition to the tariff) which AT&T deemed to contain at least four inappropriate and unacceptable provisions. Finally, AT&T alleges that NYT refused to provide local links to AT&T in the same time intervals that it provides to NYT's end users. Each of these allegations is addressed below in sequence.

Non-Compliance with the Collocation Construction Schedule

On July 22, 1994, ACC petitioned the Commission for the creation of an ONA task force to establish, in part, a standardized schedule to be followed by NYT to complete collocation construction.² Consistent with the Commission's ONA process, all interested and/or similarly situated parties were entitled to participate in the ONA Task Force proceeding. The Commission's ONA Order in that proceeding noted that:

NYT submitted a general time line depicting the various milestones from customer application to the final completion of a collocation site. The total interval is 76 business days or approximately 15 weeks. Members of the task force agreed that this time line was generally reasonable and that each collocation site would have its own unique circumstances that would affect the time line for that location.³

A copy of the ONA collocation time line, approved in that proceeding, is attached.

The ONA collocation guidelines developed by the ONA Task Force, establishing the process, costs, and time for NYT to complete collocation construction, are applicable on an industry-wide basis; NYT must provide unbundled network services

¹ Case 94-C-0577, Order Resolving ONA Task Force Issues (issued and effective December 28, 1994) (ONA Order).

² ACC, as a local exchange competitor of NYT in Syracuse, was dissatisfied with the progress of its negotiations regarding the construction by NYT of collocation cages in a NYT central office.

³ ONA Order, p.3.

on a nondiscriminatory basis to AT&T and all other similarly situated carriers consistent with the ONA Task Force findings and standards. The baseline time frame was instituted to permit competitors to establish business plans for constructing collocation cages and anticipate their completion date with reasonable accuracy.

One of the central purposes of an ONA task force is to reach industry consensus regarding ONA disputes in order to set standards and reduce the need for individual complaints. The ONA Order is the product of such consensus. Although the ACC complaint served as a catalyst, the task force was chaired by staff and included representatives of ACC, NYT, the New York State Telephone Association, Time Warner Communications, and Teleport Communications Group. Indeed, "[t]he task force was able to reach agreement concerning the time required by NYT to construct a collocation cage."¹ The final ONA collocation guideline approved by the Commission was compiled and submitted by NYT in response to the multi-party efforts. All parties, industry-wide, are entitled to rely on the findings and standards of the ONA Task Force, including the collocation guideline.

Several factual disputes exist between the parties regarding both the multiple factors that contributed to the delay in completing the four collocation cages, and who is to blame. The record is insufficient to adequately resolve all of the disputed issues,² and thus, we will clarify the ONA collocation guidelines for universal application in the future.

Clarification of ONA Task Force Results

Clarification of the ONA collocation guideline is required with regard to the specific time allotted for

¹ ONA Order, p.2.

² Some of the reasons for the delay include asbestos removal, AT&T changes to power requirements, NYT's late disclosure of rates, debate over interstate versus intrastate tariff requirements, errors in construction, etc.

construction of collocation cages. NYT interpreted the time line as 16 - 20 weeks,¹ beginning only after receipt of a 50 percent deposit. NYT's interpretation is incorrect.

The ONA order provided that the approximate 15-week time line was reasonable.² Although the Commission recognized that each collocation site would have its own unique circumstances that could affect the schedule for that location, 15 weeks remains the reasonable schedule absent such unique circumstances. Moreover, regardless of any such circumstances, the time line begins to run upon NYT's receipt of the customer application and \$7,500 application fee. Calculating the time line from receipt of the required 50 percent deposit is incorrect.

NYT cannot increase the allotted time without unique circumstances, such as major construction obstacles or special applicant requirements. Moreover, NYT is obligated to inform the applicant of any special circumstances envisaged by NYT when it provides the site survey results eight business days after receiving the application. If a unique circumstance arises thereafter, NYT must notify the applicant as soon as possible (no more than two or three business days) with an explanation why the problem was not anticipated during the site survey. In either case, upon notification, the customer is entitled to a reasonable estimate of the additional time and cost needed by NYT to overcome the unique circumstance. Notwithstanding, we see no

¹ Moreover, NYT alleges in its Response that "[t]he maximum period reflected in the time line from customer inquiry to completion of cage construction is 123 business days, or approximately twenty-four weeks."

² ONA Order, p.3.

reason why the time extension should exceed 15 business days¹ or three weeks, unless by written consent of the applicant.²

Another aspect of the time line involves the time necessary for contract negotiations. Under the ONA collocation guideline, upon receipt of the completed application and fee, NYT has five business days to complete the relevant site survey, plus an additional three days to notify the customer of the results. Thereafter, the parties have 1 to 30 days for contract negotiations, plus up to 20 days for detailed engineering and 35 days for site preparation. (See attached collocation time line.)

AT&T argues that the engineering work and site preparation should run concurrently with, and not subsequent to, the contract negotiations. They reason that the engineering studies are required in order to compile information upon which costs, and contract price, are established.

The Commission did not intend for NYT to incur the expense of detailed engineering and site preparation prior to reaching contract agreement. However, in the interests of expediting construction, the customer will be permitted to request that engineering work (and if further requested, site preparation) proceeds simultaneously with contract negotiations, if the customer agrees to pay such costs in full if the customer unilaterally withdraws its application for construction.³ NYT will be directed to satisfy any such requests.

¹ For purposes of discussing the time line established in the ONA collocation guideline, "days" shall refer to business days.

² This extension for unique circumstances is based, in part, on the fact that such cages are constructed within NYT's central offices. Thus, it is unlikely that NYT would uncover any unforeseen circumstances that could not be resolved in this extension period.

³ We do not anticipate that this will be disruptive to NYT. In the present case, NYT undertook the engineering and site preparation prior to a signed contract. In addition, parties are not likely to withdraw without good cause after payment of a nonrefundable \$7500 application fee. Those who opt for the parallel negotiations-engineering track will be even less likely to withdraw if they are liable for NYT's costs.

Whether or not the customer selects this option, the 30 day period for contract negotiations remains reasonable. Indeed, the negotiation period should not extend beyond 30 days without good cause. This seems adequate considering that NYT has informed staff that it uses virtually the same contract for all of its collocation construction. Thus, NYT should be able to provide a proposed contract to the applicant soon after the site survey and customer notification. Moreover, as discussed below, certain previously contentious contract issues must be filed in the P.S.C. No. 900 tariff. This should further reduce the need for protracted contract negotiations.

Further clarification is also necessary regarding the 35 business day allotment for site preparation. There is a 25 day installation interval that overlaps with the site preparation time and begins to run parallel with the last 15 days of the 35 day interval. In effect, both are completed within a 45 day time frame. Thereafter, the collocation guideline allows three final days for testing.

In sum, the total reasonable interval remains 76 business days or approximately 15 weeks from customer application to the final completion of a collocation site.¹ If, however, the full 30 days is necessary for contract negotiations, and the applicant does not opt for the parallel negotiations/engineering track, then the total interval could extend to 106 business days or approximately 21 weeks.

Finally, AT&T requests a proceeding to investigate NYT's policies and practices regarding collocation construction. Notwithstanding, the above clarifications should lessen the incidence of disputes among parties, and thus, we will not initiate such a proceeding at this time. However, such a proceeding may become warranted if NYT continues to be unable to

¹ Throughout the entire time interval, and especially during the engineering and construction phase, NYT is required to permit the customer, and its representatives or agents, reasonable access to the construction site.

reasonably satisfy the process, costs, or time to complete collocation construction.

Collocation License Agreement

The ONA collocation guidelines contemplate that parties may sign a contract to further elaborate the terms and conditions under which parties will implement the P.S.C. No. 900 tariff. AT&T and NYT do not dispute the need for such a contract, a Collocation License Agreement in this instance. However, AT&T disagreed with the appropriateness of certain NYT terms and conditions regarding liability and indemnification provisions, and certain fees or increases that were not already in the tariff.

AT&T also disputed another contract provision that attempted to permit NYT to avoid compliance with the Commission's order clarifying direct non-switched interconnection between collocation cages until after NYT exhausted all challenges to the order.¹ That order will supersede the relevant contract provisions even if NYT should petition for reconsideration or initiate a court challenge.

Based upon discussions with staff, NYT agreed to file revisions to P.S.C. No. 900 for Commission review, to establish standard collocation provisions, including acceptable terms and conditions to establish appropriate liability and indemnification provisions, plus any rates, charges and fees, or increases thereof. NYT will be directed to file such revisions to tariff P.S.C. No. 900, to become effective on a temporary basis, subject to refund.

Timing of Link Availability

Pursuant to an agreement to lease individual local links from NYT, NYT claimed that it was unable to provide such new links to AT&T, its competitor, in the same time intervals

¹ Case 94-C-0095, Order Clarifying September 27, 1995 Order (issued and effective May 30, 1996).

that NYT provides service to its end user customers (i.e., within five working days). AT&T alleges that NYT's position is discriminatory and anticompetitive.

A five working day interval already has been determined to be the reasonable schedule for local exchange companies to complete a normal service order.¹ NYT will be directed to provide new links to AT&T and other similarly situated carriers within five working days.

AT&T also requested that NYT transfer existing links to AT&T in less than ten working days. For transfers of existing services (i.e., a "hot cut"), NYT alleged that it needed a full ten days to avoid a lapse of service.²

Notwithstanding, NYT offered to automate part of the transfer process to reduce the delivery interval for existing hot cut links from ten to seven working days starting mid-year 1996. In addition, we note that in an interconnection agreement recently filed with the Commission, NYT acknowledged that it will have the capability to provide hot cut transfers of existing services for fewer than ten access lines to the same end user premises in a seven-day delivery interval beginning October 1, 1996, and in a five-day delivery interval beginning January 1, 1997.³ Accordingly, NYT will be directed to provide the same delivery intervals of such services to AT&T and other similarly

¹ 16 NYCRR Section 602.4(a)

² NYT claims that the time is needed to: 1) check billing records to determine if all or part of its lines are to be transferred; 2) establish a new billing account for non-transferred lines; and 3) coordinate the transfer with the interconnector and the customer (i.e., before transferring the circuit, NYT must ensure that the interconnector is providing dial tone and is ready to accept the customer).

³ In the Matter of the Interconnection Agreement executed between New York Telephone Company and Metropolitan Fiber Systems of New York, Inc. (MFS) and submitted to the Commission on July 8, 1996, for approval pursuant to section 252(e) of the Telecommunications Act of 1996.

situated carriers on the same respective dates, with appropriate safeguards to avoid a lapse in service.

Link Make-Up and Design

AT&T also asked NYT to provide certain information about each link during the provisioning process, and to identify for each individual link whether multiplexing equipment is in use. If such equipment is in use, AT&T wants the make and vintage of the equipment identified.¹ If multiplexing equipment is not in use, AT&T wants to know whether the cable is loaded or unloaded.² This information is needed to keep customers in service during a link transfer.

Subsequently, AT&T modified its position to embrace several industry requests, developed by MFS, that calls for the following link information:

- a. NYNEX Circuit ID;
- b. Confirmation of Cable Pair;
- c. NYNEX Order Numbers;
- d. Loop Type (i.e., copper, pair gain or integrated subscriber line carrier);
- e. Due Date; and
- f. Time Confirmation.

In addition, AT&T also sought information on the loop's resistance as expressed in three different ranges from zero to greater than 500 ohms.³

¹ AT&T reports that NYT may make use of multiplexing equipment on a link, which would preclude AT&T from connecting that link to its own multiplexing system. There can only be one central office-based multiplexer per link for power and signalling purposes.

² If a cable is unloaded, it may be used with multiplexing equipment. This information provides AT&T with operational flexibility, and the ability to possibly offer services other than basic exchange service.

³ Resistance levels are determined by the loop's length, gauge, and whether it is loaded or non-loaded.

Pursuant to discussions among parties in the Resale Proceeding,¹ NYT has agreed to provide the information listed above in a, b, c, e and f, at no additional cost as part of the direct customer access system (DCAS), but not the loop type and loop resistance information. NYT responded that its links are built to conform to standard design criteria, and thus, the loop type and loop resistance information are not readily available. NYT alleges that obtaining such link specific information would involve a costly, labor intensive process that cannot be readily performed. However, NYT is prepared to provide the loop type and ranges of loop resistance at appropriate additional charges.

NYT will be directed to provide the link information listed above in a, b, c, e, and f, to AT&T and other similarly situated carriers, at no additional cost as part of the DCAS. Further, NYT will be directed to file revisions to tariff P.S.C. 900 to establish when in the provisioning process NYT can provide the loop type and ranges of loop resistance information, and to establish the appropriate additional charges, to become effective on a temporary basis, subject to refund.

Feature Signalling

Local Area Signalling Services (LASS) allow local telephone companies to pass transaction messages used in providing Call Return, Repeat Dialing and Caller ID services. AT&T requested connections to exchange these messages.

NYT and AT&T have engaged in discussions regarding the passing of transaction messages between networks. NYT reports that it is technically feasible under interim number portability to forward calls (using remote call forwarding), but it is not technically feasible to forward the required transaction messages. NYT offered to proceed with an AT&T trial in situations that do not use interim numbering portability. Meanwhile, the technology being examined in the number portability trial will allow both telephone calls and transaction

¹ Cases 95-C-0657, 94-C-0095, 91-C-1174.

messages to follow a customer's local service. The parties appear to be making reasonable progress, and thus, Commission action is not required on this issue at this time.

The Commission orders:

1. New York Telephone Company is directed, for all collocation requests, to comply immediately with the collocation construction standards established by the Commission's Order Resolving ONA Task Force Issues in Case 94-C-0577, including compliance with the standardized schedule for construction as described, clarified and modified herein.

2. New York Telephone Company is directed to file within 45 calendar days of the effective date of this order, effective on 30 days notice, revisions to its tariff P.S.C. No. 900 to establish standard collocation provisions, including acceptable terms and conditions to establish appropriate liability and indemnification provisions, plus any collocation rates, charges and fees, or increases thereof. Such revisions will become effective on a temporary basis, subject to refund, and will not become permanent without further Commission action. Upon filing, New York Telephone Company is directed to serve copies of such tariff revisions on AT&T Communications of New York, Inc., and all parties to Cases 95-C-0657, 94-C-0095 and 91-C-1174 (the Resale Proceeding). Newspaper publication is waived pursuant to Section 92(2) of the Public Service Law.

3. New York Telephone Company is directed to file within 45 calendar days of the effective date of this order, effective on 30 days notice, revisions to its tariff P.S.C. No. 900 to establish when in the provisioning process NYT can provide information on the loop type and range of loop resistance, and to establish the appropriate additional charges. Such revisions will become effective on a temporary basis, subject to refund, and will not become permanent without further Commission action. Upon filing, New York Telephone Company is directed to serve copies of such tariff revisions on AT&T Communications of New York, Inc., and all parties to Cases 95-C-0657, 94-C-0095 and

91-C-1174 (the Resale Proceeding). Newspaper publication is waived pursuant to Section 92(2) of the Public Service Law.

4. New York Telephone Company is directed to provide link information at no additional cost as part of the direct customer access system as described herein, to AT&T and other similarly situated carriers.

5. New York Telephone Company is directed to provide the installation of new individual local links to AT&T and other similarly situated carriers in the same time intervals that it provides service to its end user customers (i.e., within five working days).

6. Effective October 1, 1996, New York Telephone Company is directed to provide hot cut transfers of existing links, for requests of fewer than ten access lines to the same end user premises, to AT&T and other similarly situated carriers in a seven-day delivery interval, with appropriate safeguards to avoid service outages.

7. Effective January 1, 1997, New York Telephone Company is directed to provide hot cut transfers of existing links, for requests of fewer than ten access lines to the same end user premises, to AT&T and other similarly situated carriers in a five-day delivery interval, with appropriate safeguards to avoid service outages.

8. The complaint of AT&T Communications of New York, Inc. is sustained to the extent consistent with this order and, in other respects, dismissed.

9. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

Item 9	Portions of TCG's agreement with Ameritech relating to Performance Penalties and Performance Reporting, which includes penalties and commitment to comparative reporting
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Joint Ex. 2

Discussion Draft Dated September 3, 1996
Subject to Change Based on
Further Input and Review

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252
OF THE TELECOMMUNICATIONS ACT OF 1996**

Dated as of September __, 1996

by and between

**AMERITECH INFORMATION INDUSTRY SERVICES,
a division of Ameritech Services, Inc.
on behalf of Ameritech Ohio**

and

TCG CLEVELAND

Confidential

Subject to Nondisclosure Agreement

25.2 Limitation of Damages. Except for indemnity obligations under Section 24.0, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

25.3 Consequential Damages. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 24.1 to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party.

25.4 Limitations in Tariffs. Each Party shall, to the maximum extent permitted by Applicable Law, provide in its tariffs and contracts with its Customers that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages (as defined in Section 25.3). If a Party breaches its obligations under this Section 25.4, the breaching Party shall be liable to the non-breaching Party for any and all Losses resulting from such breach, including the indemnification of and/or reimbursement for Losses arising from claims by and from such breaching Party's Customers.

26.0 LIQUIDATED DAMAGES FOR SPECIFIED ACTIVITIES

26.1 Certain Definitions. When used in this Section 26.0, the following terms shall have the meanings indicated:

26.1.1 "Specified Performance Breach" means the failure of a Party to meet the Performance Criteria for any Specified Activity for a period of three (3) consecutive calendar months.

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Subject to Nondisclosure Agreement

26.1.2 "Specified Activity" means any of the following activities:

- (i) the installation by Ameritech of unbundled Loops for TCG ("Unbundled Loop Installation");
- (ii) the provision by either Party of Interim Telecommunications Number Portability ("INP Provisioning"); or
- (iii) Either Party's repair of out of service problems ("Out of Service Repairs").

26.1.3 "Performance Criteria" means, with respect to each calendar month during the term of this Agreement, the performance by a Party during such month of each Specified Activity shown below within the time interval shown in at least ninety percent (90%) of the covered instances:

SPECIFIED ACTIVITY	PERFORMANCE INTERVAL DATE
(i) <u>Unbundled Loop Installation</u>	
1-10 Loops per Service Order	5 days from Ameritech's Receipt of valid Service Order
11-20 Loops per Service Order	10 days from Ameritech's Receipt of valid Service Order
21 + Loops per Service Order	to be Negotiated
(ii) <u>INP Provisioning</u>	
1-10 Numbers per Service Order	5 days from either Party's Receipt of valid Service Order
11-20 Numbers per Service Order	10 days from either Party's Receipt of valid Service Order
21 + Numbers per Service Order	to be Negotiated
(iii) <u>Out-of-Service Repairs</u>	Less than 24 hours from either Party's Receipt of Notification of Out-of-Service Condition

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Subject to Nondisclosure Agreement